

## Title IX

### Section by Section Analysis

**Section 911. Investor Advisory Committee Established.** The SEC has recently established an Investor Advisory Committee, made up of a diverse group of well-respected investors, to advise on the SEC's regulatory priorities, including issues concerning new products, trading strategies, fee structures, and the effectiveness of disclosure. The Investor Advisory Committee should be made permanent by statute.

**Section 912. Clarification of the Commission's Authority to Engage in Consumer Testing.** This section authorizes the SEC to gather information (e.g., through focus groups), communicate with investors or other members of the public (e.g., through telephonic or written surveys) and engage in temporary experimental programs (e.g., pilot programs to "field test" disclosures) in order to inform their rulemaking and other policy functions. This authority would be conferred under the four principal securities laws administered by the Commission: the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. The section represents an endorsement of the benefits that can accrue from field testing, consumer outreach and testing of disclosures to individual investors.

**Section 913. Establishment of a Fiduciary Duty for Brokers, Dealers and Investment Advisers and Harmonization of the Regulation of Brokers, Dealers and Investment Advisers.** This section authorizes the SEC to promulgate rules conforming the duties owed to investors by broker-dealers and investment advisers. Currently, these two types of financial services professionals are subject to very different standards of care and regulatory regimes, even though the services they provide investors often are very similar. The section establishes that brokers, dealers and investment advisers providing investment advice about securities shall be the same fiduciary standard of conduct. The section also authorizes the SEC to take steps to facilitate simple and clear disclosure to investors about their relationships with brokers, dealers and investment advisers and to prohibit sales practices, conflicts of interest and compensation schemes that it deems contrary to the public interest and the interest of investors.

**Section 914. Clarification of Commission Authority to Require Investor Disclosure Before Purchase of Investment Company Shares.** This section authorizes the SEC to designate documents (e.g., a mutual fund summary prospectus) or information (e.g., information about performance or comparative fee and expense information available from a website) that must be provided to an investor *prior to* the purchase of shares of a mutual fund or other registered investment company.

**Section 921. Authority to Restrict Mandatory Pre-Dispute Arbitration.** This section authorizes the Commission to promulgate rules to prohibit, or impose conditions or limitations on the use of, pre-dispute agreements requiring arbitration between a broker, dealer, or municipal securities dealer and its customers.

**Section 922. Whistleblower Protection; Section 923. Conforming Amendments for Whistleblower Protection; and Section 924. Implementation and Transition Provisions For Whistleblower Protections.** The SEC would be provided with the authority to establish a fund to pay whistleblowers for information that leads to enforcement actions resulting in significant financial awards using funds collected in enforcement actions not otherwise distributed to investor. Currently, the SEC has the authority to compensate sources in insider trading cases; that authority should be extended to compensate whistleblowers that bring substantial evidence of other securities law violations.

**Section 925. Collateral Bars.** This section would authorize the SEC to impose collateral bars against regulated persons. The SEC should have the authority to bar a regulated person who violates the securities laws in one part of the industry, for example a broker-dealer who misappropriates customer funds, from access to customer funds in another part of the securities industry such as an investment adviser. By expressly empowering the SEC to impose broad prophylactic relief in one action in the first instance, this section would enable the SEC to more effectively protect investors and the markets while more efficiently using SEC resources.

**Section 926. Aiding and Abetting Authority Under the Securities Act and the Investment Company Act.** The Exchange Act and the Investment Advisers Act permit the SEC to bring actions for aiding and abetting violations of those statutes in civil enforcement actions. This section would provide the SEC with authority to bring actions for aiding and abetting violations of the Securities Act and the Investment Company Act, which authority the SEC currently does not have. In addition, the section would clarify that the knowledge requirement to bring an aiding and abetting claim can be satisfied by recklessness.

**Section 927. Authority to Impose Penalties for Aiding and Abetting Violations for the Investment Advisers Act.** This section would clarify that the Investment Advisers Act expressly permits imposition of penalties on aiders and abettors.